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No. 06-739

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IN THE

Supreme Court of the United States

WALTER W. KELLEY,

Petitioner,

v.

RICKY WAYNE BRACEWELL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The filing of a bankruptcy petition creates a "bankruptcy estate," defined by statute to include those property rights held by the debtor "as of the commencement of the case." The bankruptcy estate also includes proceeds of property of the estate. The question presented is whether, when a debtor obtains a right to payment under a farmer bailout program, enacted by Congress *after* the filing of the bankruptcy petition, that right to payment is part of the bankruptcy estate.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

Respondent Ricky Wayne Bracewell submits this brief in response to this Court's Order dated January 4, 2007, directing that he respond to the Petition.

The Petition should be denied. Each of the three courts of appeals to address the specific question presented—whether a payment made under a farmer bailout program enacted after the filing of a bankruptcy petition is part of the debtor's bankruptcy estate—has held that it is not. That unanimous conclusion is correct. Indeed, it is mandated by the plain statutory language of section 541(a) of the Bankruptcy Code. 11 U.S.C. § 541(a).

In the absence of a circuit split on the specific question presented, Petitioner argues that lower courts are divided over the continued vitality of this Court's pre-Bankruptcy Code holding in *Segal* v. *Rochelle*, 382 U.S. 375 (1966). That division of authority is illusory. *Segal* held that a tax refund

to which a debtor is statutorily entitled as of the petition date—but that is not actually *paid* until after the petition—is part of the bankruptcy estate. That holding is noncontroversial and remains in force.

The basic and longstanding rule, now codified in 11 U.S.C. § 541(a)(1), is that all rights that the debtor has as of the petition date—including rights that are contingent as of that time—are property of the bankruptcy estate. Accordingly, if after the bankruptcy filing, the debtor receives payments on an insurance policy that covered pre-petition losses, a tax refund related to pre-petition income, or a payout on a lottery ticket that the debtor bought before the bankruptcy, all of those payments are property of the bankruptcy estate, and must be turned over to the trustee for distribution to creditors. That is the principle the *Segal* Court (applying the predecessor statute—the Bankruptcy Act of 1898) was capturing when it said that a payment is part of the estate if it is "sufficiently rooted in the pre-bankruptcy past." 382 U.S. at 380.

At the same time, that statement does not mean, and has never meant, that the mere fact that a post-bankruptcy payment can find some "root" in the pre-bankruptcy past renders that payment part of the bankruptcy estate. For example, post-bankruptcy earnings are paradigmatically *outside* the bankruptcy estate—they are property of the individual debtor—even if a trustee can prove that the debtor's income is "rooted" in his pre-bankruptcy education. By the same token, a post-bankruptcy gift received by the debtor is likewise outside of the bankruptcy estate, even if the *reasons* for the gift relate to actions that took place before the bankruptcy. Because the debtor had no right—not even a contingent right—to those payments as of the filing of the bankruptcy, these payments all fall outside the bankruptcy estate.

That is the principle applied by the court of appeals below, and each of the courts of appeals to consider whether payments made under farmer relief programs enacted *after* a debtor's bankruptcy case are property of the estate. *See*

Pet. App. 1a-43a; *Burgess* v. *Sikes (In re Burgess)*, 438 F.3d 493, 503 (5th Cir. 2006) (en banc); *Drewes* v. *Vote (In re Vote)*, 276 F.3d 1024, 1026-1027 (8th Cir. 2002). These courts have held—quite correctly—that the payments received under these programs are more like a post-bankruptcy gift than they are like a post-bankruptcy payment on a pre-bankruptcy insurance policy. For present purposes, however, the critical point is that the lower court decisions applying *Segal* are in complete harmony. Whatever disagreement may exist about the continued application of the so-called "*Segal* test" is purely semantic. The holdings of the cases reflect no division of authority.

Nor is there disagreement in the courts of appeals on whether the payments are "proceeds" of property of the estate—which are themselves estate property pursuant to 11 U.S.C. § 541(a)(6). Two of the three cases on which the Petition relies for that proposition do not involve the construction of the Bankruptcy Code at all, but are instead addressed to the scope of the term "proceeds," under state contract law, when used in a security agreement. *See In re Schmaling*, 783 F.2d 680 (7th Cir. 1986); *Pombo* v. *Ulrich (In re Munger)*, 495 F.2d 511 (9th Cir. 1974). And the only case involving a question of federal law held that the payment at issue—a "payment-in-kind" made to a farmer in return for not planting a crop—was *not* property of the bankruptcy estate. *Schneider* v. *Nazar (In re Schneider)*, 864 F.2d 683 (10th Cir. 1988). The Tenth Circuit there emphasized that "[o]ur holding is narrow," *id.* at 686, and that holding is fully in accord with that of the Eleventh Circuit here. The Petition should be denied.

STATEMENT OF THE CASE

A. Proceedings Below

1. Respondent Ricky Wayne Bracewell planted approximately 223 acres of seed wheat in November 2000 and approximately 374 acres of seed cotton in May 2001. Pet. App. 2a, 47a, 66a. During 2001, Respondent's crops were plagued by drought, resulting in substantially reduced crop

yields. *Id.* Due to the reduced yields, Respondent was left unable to pay his farm-related debts. *Id.*

On May 29, 2002, Respondent filed a chapter 12 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Georgia. Pet. App. 2a, 47a, 66a. On January 2, 2003, Respondent converted his bankruptcy case to chapter 7, and Petitioner was appointed as the chapter 7 trustee. *Id.* at 1a-2a, 65a- 66a.

Thereafter, as part of an effort to provide assistance to farmers who suffered losses due to weather-related disasters or other emergency conditions in 2001 or 2002, Congress enacted the Agricultural Assistance Act of 2003, Pub. L. No. 108-7, div. N., Tit. II, 117 Stat. 538 (2003). *See* Pet App. 3a, 47a-48a, 66a. That Act was signed into law on February 20, 2003. *Id.*

On January 30, 2004, Respondent applied for assistance under the Act, to which he was entitled on account of his 2001 failed crops. The next month, Respondent received a payment from the United States Department of Agriculture in the amount of $41,566. Pet. App. 3a, 48a, 66a.

2. Petitioner filed a motion in the bankruptcy court seeking a determination that the $41,566 assistance payment was estate property. Pet. App. 48a, 66a. The bankruptcy court held that the payment was property of the estate under section 541(a)(1), concluding that the payment "stemmed from an inchoate right [Respondent] acquired pre-petition." *Id.* at 72a. The bankruptcy court rejected, however, the argument that the payment was "proceeds" of property of the estate, noting that the payment is traceable only to the 2001 crop, and the "2001 crop itself cannot be property of the estate because it was not in existence on the date Respondent filed his bankruptcy petition." *Id.* at 71a.

3. The district court affirmed in part, and reversed in part. Specifically, the district court held that the assistance payment belonged to the debtor individually and was not property of the estate under either section 541(a)(1) or 541(a)(6). Pet. App. 64a.

With respect to section 541(a)(1), the district court rejected the bankruptcy court's conclusion that Respondent had any legally cognizable interest, even a contingent one, as of the filing of the bankruptcy:

> Without the crop disaster legislation, growing crops and suffering crop loss—no matter how sufficiently rooted to the pre-bankruptcy past—are of no legal significance and create no right. . . . [I]t is the crop disaster legislation that makes growing and suffering certain crop losses relevant by attaching new legal consequences to events completed before the legislation's enactment.

Pet. App. 55a (footnote omitted). The district court expressly distinguished this Court's decision in *Segal* on the ground that the debtors in *Segal* had more than a mere hope that they might recover tax refunds; rather, the debtors had a contingent right to the payment of tax refunds as of the commencement of their cases. *Id.*

The district court agreed, however, with the bankruptcy court's conclusion that the payment was not "proceeds" of property of the estate under 11 U.S.C. § 541(a)(6) reasoning, as the bankruptcy court had, that section 541(a)(6) "could not retroactively create a property interest that did not exist at the commencement of the case." Pet. App. 57a.

4. The court of appeals affirmed. First, the court of appeals explained that the plain language of section 541(a)(1) "makes the commencement of the bankruptcy case the key date for property definition purposes." Pet. App. 3a. The Eleventh Circuit gave a literal reading to section 541(a)(1), providing that the debtor's interest in property "as of the commencement of the case" becomes property of the bankruptcy estate. Where the authorizing legislation at issue was not enacted until after the bankruptcy filing, the court of appeals held that Respondent had no cognizable legal interest in the assistance payment as of the petition date. *Id.* at 3a-7a.

Second, the court of appeals held that, for the same reasons, the assistance payment could not be "proceeds" of estate property under section 541(a)(6). The Eleventh Circuit concluded that "nothing in § 541(a)(6) pushes the later-acquired legal or equitable interest back into the estate." Pet. App. 18a.

B. Statutory Background

The purpose of a liquidation proceeding under chapter 7 of the Bankruptcy Code is to provide a fair distribution of the debtor's assets among creditors. The chapter 7 trustee is tasked with collecting the property of the estate and distributing such property in satisfaction of creditors' claims. 11 U.S.C. §§ 704, 726.

To that end, the commencement of a bankruptcy case creates an estate comprised of "all legal or equitable interests of the debtor in property *as of the commencement of the case*." 11 U.S.C. § 541(a)(1) (emphasis added).[1] "[T]he term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." *Segal* v. *Rochelle*, 382 U.S. 375, 379 (1966). For instance, if a debtor purchased an insurance policy or a lottery ticket prior to the commencement of the bankruptcy case, any resulting payment—if the debtor sustains an insured loss or if the debtor's number is chosen—is part of the estate because, on the petition date, the debtor held a contractual right to payment should certain contingencies occur. *See, e.g.*, Pet. App. 56a. Similarly, when a debtor holds a right to payment at the time of a bankruptcy filing, whether vested, unmatured,

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[1] Although federal law determines whether an interest is property of the bankruptcy estate, nonbankruptcy law—typically state law—determines the nature and existence of a debtor's right to property. *See Barnhill* v. *Johnson*, 503 U.S. 393, 398 (1992) ("In the absence of any controlling federal law, 'property' and 'interests in property' are creatures of state law." (citation omitted)); *see also Butner* v. *United States*, 440 U.S. 48, 55 (1979). Because the disaster relief payment in the instant case is a creation of federal law, no issues of state law are implicated.

or contingent, that right becomes property of the bankruptcy estate.

While the concept of estate property is broadly construed, it is not unlimited. Congress has expressly cautioned that the Bankruptcy Code "is not intended to exp[a]nd the debtor's rights against others more than they exist at the commencement of the case." S. Rep. No. 95-989, at 82 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5868; H.R. Rep. No. 95-595, at 367 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6323. Thus, when a debtor has no interest in property as of the petition date, not even a contingent or unmatured interest, then any subsequent payment received falls outside the estate. For instance, there is no doubt that a gift received post-petition does not constitute property of the estate. In addition, certain property is specifically excluded or exempted from the estate by statute. 11 U.S.C. §§ 541(b), 522. For example, Congress specifically excluded from the bankruptcy estate an individual debtor's wages for services performed after the filing of a bankruptcy petition. 11 U.S.C. § 541(a)(6).

Thus, while the scope of section 541(a) is broad, it is limited temporally by the plain language of the statute to interests that exist at the moment that the bankruptcy petition is filed.

REASONS FOR DENYING THE PETITION

The decision of the court of appeals below is correct and does not conflict with any decision of this Court or of another court of appeals. Review by this Court is therefore not warranted.

I. THE COURTS OF APPEALS TO HAVE CONSIDERED THE QUESTION AGREE THAT FARMER BAILOUT PAYMENTS UNDER PROGRAMS ENACTED AFTER A BANKRUPTCY PETITION FALL OUTSIDE THE BANKRUPTCY ESTATE

This Court should not grant certiorari because there is no disagreement among the courts of appeals on the question presented. The Fifth, Eighth, and Eleventh Circuits have addressed the exact issue of whether a right to pay-

ment made under a farmer bailout program enacted after the filing of a bankruptcy petition is property of the debtor's bankruptcy estate. Each has correctly held that it is not. Pet. App. 6a-7a, 21a; *Burgess* v. *Sikes (In re Burgess)*, 438 F.3d 493, 503 (5th Cir. 2006) (en banc); *Drewes* v. *Vote (In re Vote)*, 276 F.3d 1024, 1027 (8th Cir. 2002). Rather, these courts have held that a debtor in Respondent's position has no legal or equitable interest in crop bailout payments unless and until the authorizing legislation becomes law. Before such legislation is passed, the debtor merely has "a hope and maybe an expectation that legislation will be enacted for his relief." Pet. App. 6a. The courts of appeals unanimously agree that this hope or expectation is not enough to give rise to a cognizable property interest as of the petition date. *Id*; *In re Burgess*, 438 F.3d at 503; *In re Vote*, 276 F.3d at 1027.

The court of appeals below concluded that, as of the petition date, Respondent had no right to crop bailout payments made under The Agricultural Assistance Act of 2003 because his interest in such payments, contingent or otherwise, did not exist or accrue until the Act was passed, which occurred after the commencement of Respondent's bankruptcy case.[2] Pet. App. 5a-7a.

On facts nearly identical to those presented by the Petition and involving assistance payments under the same Act, the Fifth Circuit, sitting en banc, refused, on the same grounds, to re-open a farmer's bankruptcy case to include post-petition payments made to the debtor under the Act. Because the Act was not law when the debtor filed his bankruptcy petition, the Fifth Circuit concluded there was no es-

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[2] Respondent's bankruptcy case began as a chapter 12 proceeding, triggering 11 U.S.C. § 1207(a)(1), which effectively extends the section 541(a)(1) cutoff date for measuring property of the estate from the date of filing to the time that the case is converted to chapter 7. In the instant case, section 1207(a)(1) is not applicable because the conversion of Respondent's chapter 12 case to chapter 7 predated the enactment of The Agricultural Assistance Act of 2003. Accordingly, the parties effectively refer to the date of the chapter 7 conversion as the petition date. Pet. 6 n.2.

tate property at the time of the bankruptcy petition. The Fifth Circuit reasoned that for the temporal limitation of section 541(a)(1) to have any meaning at all, it would be necessary for the debtor to have a pre-petition right to the assistance payment for such post-petition payment to constitute property of the estate. *In re Burgess*, 438 F.3d at 503. As of the petition date, the debtor did not and could not have a right, contingent or otherwise, to hypothetical payments under a then nonexistent law.

Similarly, in *In re Vote*, the Eighth Circuit held that comparable assistance payments were not property of the estate under section 541(a)(1) because the legislation authorizing such payments was enacted six weeks after the petition date. 276 F.3d at 1026. The Eighth Circuit reasoned that to include such payments in the estate would give the trustee interests in property beyond what the debtor had at the commencement of his bankruptcy case. *Id.*

Other courts of appeals are also in accord. For example, while addressing a slightly different question, the Ninth Circuit's decision in *Sliney* v. *Battley (In re Schmitz)*, 270 F.3d 1254, 1257-1258 (9th Cir. 2001), reaches the same result as the Fifth, Eighth, and Eleventh Circuits. The question before the Ninth Circuit was whether a fishing quota for future years awarded under regulations promulgated post-petition was property of the debtor's estate. After the debtor filed his bankruptcy petition in *Schmitz*, he was awarded a fishing quota for future years calculated on his pre-filing fishing history. *Id.* at 1255. While the quota was based on pre-petition facts, the regulations creating the quota rights were not promulgated at the time Schmitz filed for bankruptcy. *Id.* at 1257. The Ninth Circuit concluded that the quota rights were not part of the bankruptcy estate because the regulations creating those rights were not adopted until after the petition date. *Id.* at 1257-1258.

Thus, the courts of appeals that have considered the issue presented by the Petition uniformly agree that no legal or equitable interest in the right to receive crop relief payments exists until assistance legislation becomes law. This

case presents no unresolved question of law worthy of consideration by this Court.

II. THE ASSERTED SPLIT ON THE "SUFFICIENTLY ROOTED" TEST IS ILLUSORY

In the absence of a circuit split on the question presented, Petitioner argues that the courts of appeals are divided over the continued vitality of this Court's pre-Bankruptcy Code decision in *Segal* v. *Rochelle*, 382 U.S. 375 (1966). That supposed division of authority among the circuit courts is illusory. The holding of *Segal* is that a debtor's entitlement to a tax refund that was paid post-bankruptcy, but to which the debtor became legally entitled by virtue of pre-bankruptcy losses, was property of the debtor's bankruptcy estate under the Bankruptcy Act. That holding is wholly consistent with current decisional law under the Bankruptcy Code. Petitioner's asserted split does not implicate the holding of *Segal*, only its language.

The question before the Court in *Segal* was whether tax refunds obtained post-petition by the debtors were "property" of the bankruptcy estate under § 70a(5) of the prior Bankruptcy Act, the predecessor to 11 U.S.C. § 541(a)(1). As used in § 70a(5), however, the term "property" was undefined. Accordingly, the Court reasoned that whether the tax refunds were property of the estate turned on whether the debtors held a right to payment of the refund "at the time [the] bankruptcy petitions were filed." *Segal*, 382 U.S. at 380. Because the debtors held a right, as of the bankruptcy filing, to receive a future tax refund, the Court held that the right to that refund was property of the bankruptcy estate.

In explaining its holding, the *Segal* Court noted that the tax refund was "sufficiently rooted in the pre-bankruptcy case past and so little entangled with the bankrupts' ability to make an unencumbered fresh start," that it was appropriate to treat the refund as part of the estate. 382 U.S. at 380. The Court, however, did not purport to establish a "sufficiently rooted" test for determining whether a right to payment was property of a bankruptcy estate. Rather, the

Court simply found that the right to the tax refund at issue in that case arose pre-petition, and thus was property of the estate.

Segal's specific holding remains unquestioned by the courts of appeals. Indeed, Petitioner concedes that the *Segal* holding remains in force under the law of the Second, Fourth, Sixth, and Ninth Circuits. *See, e.g., United States* v. *Kennedy*, 2000 WL 1720962, at * 4 (2d Cir. Nov. 17, 2000) (unpublished) (concluding proceeds of a pre-petition contract were property of the estate under 11 U.S.C. § 541(a)(6)); *Beaman* v. *Shearin (In re Shearin)*, 224 F.3d 346, 351 (4th Cir. 2000) (affirming post-petition payment of law firm profits property of the estate where debtor held legally cognizable interest in law firm as of the petition date); *Williams* v. *Johnson (In re Williams Bros. Asphalt Paving Co.)*, 1995 WL 316799, at *1 (6th Cir. May 24, 1995) (unpublished) (affirming refund for crude oil overcharges was property of the estate where the right to the refund accrued pre-petition); *Rau* v. *Ryerson (In re Ryerson)*, 739 F.2d 1423, 1426 (9th Cir. 1984) (concluding debtor's estate includes contingent claims against third parties that exist as of the petition date).

Petitioner further acknowledges that decisions of the First, Third, Seventh, Tenth, and Federal Circuits, while neither addressing the issue presented by the Petition nor specifically employing the "sufficiently rooted" phraseology, are nonetheless in accord with the *Segal* holding. *See, e.g., Watman* v. *Groman (In re Watman)*, 458 F.3d 26, 33 (1st Cir. 2006); *Pension Transfer Corp.* v. *Beneficiaries Under Third Amend. To Fruehauf Trailer Corp. Ret. Plan No. 003 (In re Fruehauf Trailer Corp.)*, 444 F.3d 203, 211 (3d Cir. 2006); *Watson* v. *H.J. Heinz Co.*, 101 F. App'x 823, 825 (Fed. Cir. 2004); *In re Yonikus*, 996 F.2d 866, 869 & n.3 (7th Cir. 1993); *Barowsky* v. *Serelson (In re Barowsky)*, 946 F.2d 1516, 1518-1519 (10th Cir. 1991).

The Petition's asserted split rests on statements by the court of appeals below, and by the Fifth Circuit, rejecting the proposition that the "test" for whether a payment is

property of the estate is whether it is "sufficiently rooted" in the pre-bankruptcy past. But in doing so, those cases did not repudiate *Segal*'s holding, and created no division of authority. Rather, they correctly held that the language of section 541 of the Bankruptcy Code, not *Segal*'s functionally equivalent but verbally distinct "sufficiently rooted" language, established the governing test for determining whether a right to payment was property of the estate.

The court of appeals below addressed *Segal* only in response to the dissent's argument that the *Segal* phraseology should trump the plain language of section 541(a)(1). The panel majority rejected that proposition, making clear that the "sufficiently rooted" language of *Segal* may not be read, as the dissent suggested, to establish a "test" for when a right to payment is property of the bankruptcy estate. Rather, the controlling "test"—as *Segal* itself makes clear—turns on whether the debtor has a legally cognizable right to receive a future payment "as of the commencement of the case." 11 U.S.C. § 541(a)(1); *see also Segal*, 382 U.S. at 379 ("The main thrust . . . is to secure for creditors everything . . . the bankrupt may possess . . . when he files his petition.").

Similarly, the Fifth Circuit in *In re Burgess* acknowledged the continued applicability of the *Segal* holding but rejected the notion that *Segal*'s "sufficiently rooted" language constituted the governing test under section 541(a)(1). 438 F.3d at 498-499.

Although the courts of appeals may differ in the language that they have used, their holdings are in harmony. Thus, there is no disagreement among the courts of appeals that would merit this Court's intervention.

III. THERE IS NO DIVISION OF AUTHORITY ON THE MEANING OF THE TERM "PROCEEDS" IN SECTION 541(a)(6)

The Petition seeks to construct the appearance of a conflict between the decision of the court of appeals below in this case and decisions of the Seventh, Ninth, and Tenth Circuits, but no such conflict exists. The issues examined by the Seventh and Ninth Circuits are fundamentally different

from the section 541(a)(6) issue raised in this case—they involve constructions of security agreements governed by state law, not the Bankruptcy Code. And the Tenth Circuit determined, in accord with the Eleventh Circuit here, that the government farming assistance payments were not "proceeds" under section 541(a)(6).

The Seventh and Ninth Circuits have addressed the issue of whether, when a farmer signs a contract granting a creditor a lien on the farmer's crops, that farmer also grants a lien on certain assistance that the farmer later receives from the government. *In re Schmaling*, 783 F.2d 680 (7th Cir. 1986); *Pombo* v. *Ulrich (In re Munger)*, 495 F.2d 511 (9th Cir. 1974). These decisions involve the interpretation of specific contracts under state law, and turn on the intent of the farmers and the creditors in entering into the contracts. What is more, they address government assistance available on facts substantively different from those applicable to the Respondent under the Act.[3] The Seventh Circuit on its facts found that the assistance payments were not proceeds; the Ninth Circuit on its different facts reached the opposite conclusion. But more importantly, neither decision involves a construction of the Bankruptcy Code or otherwise turned on

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[3] Recent bankruptcy court decisions interpreting "property of the estate" issues under section 541(a)(6) as well as section 541(a)(1) with respect to federal subsidy programs have reached different conclusions based on the facts of each program. *See, e.g., In re Evans*, 337 B.R. 551, 554-557 (Bankr. E.D.N.C. 2005) (holding that different qualification requirements under different parts of legislation made some payments property of the estate but other payments property of the debtor); *First Nat'l Bank of Spearville* v. *Klenke (In re Klenke)*, 2004 WL 2192517, at *6 (Bankr. D. Kan. Feb. 3, 2004) (same); *In re Thaggard*, 2003 WL 24108186, at *3 (Bankr. M.D. Ga. Apr. 3, 2003) (holding payments were not property of the estate on a "close decision" that was highly fact-dependent); *In re Stallings*, 290 B.R. 777, 782-783 (Bankr. D. Idaho 2003) (holding postpetition disaster relief payment under government assistance program not established at time of bankruptcy filing not property of the estate). It is unsurprising that courts have reached differing outcomes based on distinguishable facts. This by no means evidences a split of authority on any question of federal law.

a matter of federal law. As such, the cases cannot conflict with the Eleventh Circuit's holding here.

The Seventh Circuit, in *In re Schmaling*, 783 F.2d at 684, found that a broad lien in all farm-related assets, granted in 1982 by a farmer to its bank lender, did not extend to commodities received by the farmer in 1983 under a government payment-in-kind program. Under that program, a farmer who agreed to refrain from growing crops on part of his land would receive a commodity equal to what his non-producing acreage would typically yield. The court examined the description of the specific collateral covered by the creditor's security agreement and applied state-law contract interpretation principles to conclude that the payments-in-kind were not "proceeds" on which the creditor had a lien. *Id.* at 682-683. The court reasoned that "proceeds" were generally understood to mean property "received in consequence of the disposition of collateral," and "in the instant case there was never a crop of which to dispose." *Id.* at 683. Accordingly, the Seventh Circuit did not mention or discuss section 541(a)(6), the Agricultural Assistance Act, crop disaster relief, failed crops, or even the concept of post-petition legislation.

The Ninth Circuit, in *In re Munger*, 495 F.2d at 512-513, examined a different security agreement in a different factual landscape, and found that a creditor, who was in 1966 and 1969 granted liens on sugar beet crops and their "proceeds," did have a lien on government subsidy payments made under the Sugar Act of 1948. The court considered whether the word "proceeds" in the security agreements contemplated the government subsidy payments under California state law. To reach its conclusion that the subsidy payments were "proceeds" for that purpose, the court needed to assume that the security agreements were drafted by the farmer and the creditor with that understanding of the word "proceeds," and that interested third parties could be expected to know that the farmer's crops were entitled to various conditional subsidy payments under the Sugar Act of 1948. *Id.* at 513. In other words, the court based its ruling

on the intent of the parties to the contract and whether the contract gave third parties notice of the creditor's liens. This too was a case that addressed only questions of contract interpretation. The Ninth Circuit had no occasion to address, and did not mention or discuss, section 541(a)(6), the Agricultural Assistance Act, crop disaster relief, failed crops, or post-petition legislation.

The only case cited by Petitioner that even raises a question of federal law was the Tenth Circuit's decision in *Schneider* v. *Nazar (In re Schneider)*, 864 F.2d 683 (10th Cir. 1988). The question presented in *Schneider* was whether a government payment under a payment-in-kind program similar to the one addressed by the Seventh Circuit in *Schmaling* was property of the debtor's bankruptcy estate under section 541(a)(6). The court held that such a payment was not property of the estate, distinguishing payments made on account of an agreement not to plant crops, from payments that "result from the actual disposition of a planted crop." *Id.* at 685. The court made clear that its holding was on that section 541(a)(6) basis alone: "Our holding is narrow. The proceeds of the payments-in-kind belong to the debtors [and not the estate/trustee] under § 541(a)(6) because [payment-in-kind] contract formation had not been completed as of the date of the petition, and there is no suggestion that the sequence of events was planned to defeat a trustee's claim." *Id.* at 686. In other words, the payments-in-kind were proceeds of the payment-in-kind contract, not the proceeds of any crops; and, because the debtor-farmer had no contractual or other legal right to the payments at the time of the bankruptcy, the payments could not be the proceeds of any such right under section 541(a)(6). The Tenth Circuit's decision in *Schneider* is therefore consistent with, and in fact its holding supports, the decision of the Eleventh Circuit below.

In addition, the Eleventh Circuit's decision is in full accord with the only other court of appeals decision expressly to consider the application of section 541(a)(6) to assistance payments made under a relief program enacted after the

bankruptcy—the Fifth Circuit's en banc decision in *In re Burgess*, 438 F.3d 493. There, the Fifth Circuit relied on two reasons for its holding that the assistance payments were not "proceeds" under section 541(a)(6). First, the payments are not "proceeds" of any petition-date right to such payments, because no petition-date right to such payments ever existed:

> [In contrast to the facts in *Segal*], Burgess suffered the crop loss before filing for bankruptcy, but he did not have a prepetition claim to, or interest in, the disaster-relief payment because the legislation authorizing the payment had not yet been enacted. If Burgess had no right or interest that constituted property within the meaning of § 541(a)(1) at the commencement of the case, then the payment he later received cannot be proceeds of property of the estate under § 541(a)(6).

Id. at 499. Second, the payments are not "proceeds" of any pre-petition "crop loss" of Burgess, because a "crop loss" alone is a "pure loss" and not an interest as of the bankruptcy filing from which proceeds can be generated. *Id.* at 503.

In sum, the decisions of the Seventh, Ninth, and Tenth Circuits cited by Petitioner as being in "conflict" with the Eleventh Circuit's decision below create no circuit split at all. This is not to say that no conflict could ever arise on the section 541(a)(6) issue (or, indeed, on the construction of section 541(a)(6)) addressed by the Fifth Circuit in *Burgess* and the Eleventh Circuit below. Indeed, the Petition is correct that some number of district and bankruptcy courts have reached conclusions at odds with those holdings. *See* Pet. 23-24. At this point, however, it is too soon to know whether other courts of appeals will adopt the unanimous conclusion of those courts of appeals to have addressed this issue, or will instead create a circuit split that might warrant review in this Court. In this case, however, this Court should apply its traditional criteria and deny the Petition, awaiting the

development of a conflict among the courts of appeals before granting review.

IV. The Eleventh Circuit's Holding Is Correct On The Merits

Review in this case is unwarranted for the additional reason that the decision of the court of appeals below is correct on the merits. As the Eleventh Circuit properly held, a payment arising under a statute that had not been passed by Congress as of the bankruptcy filing cannot be an "interest[] of the debtor in property *as of the commencement of the case*." 11 U.S.C. § 541(a)(1) (emphasis added). Nor is the payment "proceeds" of estate property under section 541(a)(6), since there is no sense in which the payment is received in "exchange" for the crops—the longstanding and traditional meaning of "proceeds."

A. Respondent Had No Legal Or Equitable Interest In The Assistance Payment As Of The Petition Date—As Such, The Payment Is Not Property Of The Estate Under Section 541(a)(1)

Section 541(a)(1) defines property of the bankruptcy estate as "all legal or equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). This plain and unambiguous language makes clear that the petition date is the key date for purposes of defining what legal and equitable interests constitute property of the estate. Under section 541(a)(1), the estate succeeds only to those interests that the debtor had in property prior to the commencement of the bankruptcy case. *See, e.g.*, *Rutherford Hosp., Inc.* v. *RNH P'ship*, 168 F.3d 693 (4th Cir. 1999). "Property of the estate" generally does not include any property interests or income acquired by the debtor after the petition date, except to the extent that they fit into narrow categories such as proceeds or rents of estate property that existed on the petition date. 11 U.S.C. § 541(a)(6).

Courts addressing the issue of whether a post-petition payment is part of the bankruptcy estate in other contexts have held that such interests are not property of the estate

where no cognizable property interest existed on the petition date. *See, e.g., Segal*, 382 U.S. at 380 (observing future wages and promised gifts do not constitute property of the bankruptcy estate); *Lewis* v. *Chappo (In re Chappo)*, 257 B.R. 852, 854-855 (E.D. Mich. 2001) (affirming post-petition payment of bonus not included in employee's bankruptcy estate where employer had reserved right to terminate, modify, or suspend bonus program); *In re Mattice*, 81 B.R. 504, 507 (Bankr. S.D. Iowa 1987) (holding payments under feed and grain program not property of the estate where debtor had no legal right to such payments as of the commencement of the bankruptcy case); *Medor* v. *Lamb (In re Lamb)*, 47 B.R. 79, 81-83 (Bankr. D. Vt. 1985) (holding post-petition payment under milk diversion program not property of the estate where milk producer had no choate right of action on petition date).

The record in this case establishes without question (the relevant facts having been stipulated to below) that at the time Bracewell's bankruptcy case was converted to chapter 7, Bracewell had nothing more than a mere hope or expectation that crop bailout legislation would be enacted. At that time, no crop bailout legislation had been enacted into law. As the Eleventh Circuit logically reasoned, without such a law, there simply was no right to a relief payment. Pet. App. 6a-7a. "Not until the enactment of the legislation elevated Bracewell's hope to an entitlement did it become an interest cognizable under § 541(a)(1)." *Id.* at 7a. In this instance, that happened post-petition, thereby taking such payment outside the context of estate property.

B. The Assistance Payment Was Not "Proceeds" Of Estate Property Under Section 541(a)(6)

For an item of property to be "proceeds" under section 541(a)(6), it must be related to some *other* petition-date interest. And while there can be and often is a dispute as to how "related" the post-petition interest must be to the petition-date interest to qualify as proceeds, the key point here is that the "failed crops" are not property in which the debtor ever held an interest. Like "eaten food," "traveled

highways," or "lost time," "failed crops" are not themselves interests in property that can be said to generate "proceeds."

Put another way, if the payments at issue had been made pursuant to an insurance policy that had been issued with respect to the crops, the payments would, as a matter of logic and commonsense, be viewed as proceeds of the insurance policy—not the failed crops. The same is true here. Insofar as the payments are "proceeds" of anything, they are proceeds of The Agricultural Assistance Act of 2003—a legislative enactment that did not come into being until after the bankruptcy case.

The Petition offers two separate criticisms of the Eleventh Circuit's section 541(a)(6) holding. First, Petitioner states that the Eleventh Circuit erred in concluding that Bracewell's post-petition payments were "merely 'assistance'" and not "proceeds" under section 541(a)(6). Pet. 18-23. The central point of the court of appeals reasoning in this regard was that Congress "did not purport to purchase the ruined crops," but instead provided "*assistance*" to Bracewell. Pet. App. 18a. That conclusion was correct. As the Eleventh Circuit properly noted, because Bracewell had no interest as of the petition date in any property of which the payments could be proceeds, the payments cannot qualify as proceeds of any such interest.

Second, and relatedly, Petitioner argues that the Eleventh Circuit erred in concluding that Bracewell's "failed crops" were not property of the estate to which proceeds could relate under section 541(a)(6). Pet. 23-25. On this point, the Petition makes the alchemic mistake of turning Bracewell's "failed crops" into an interest that would qualify as property of the estate under section 541(a)(6). As discussed above, however, failed crops did not exist as of the petition date, and could not generate any "proceeds."

V. THE FUNDAMENTAL OBJECTIVES OF THE BANKRUPTCY CODE ARE NOT IMPLICATED BY THIS CASE

Petitioner identifies four principles that it labels "fundamental objectives" of the Bankruptcy Code and argues that these principles are contravened by the Eleventh Circuit's decision in "far reaching" respects. Pet. 25-30. This plea to principles of bankruptcy policy is unavailing.

Nearly all commentators identify two primary goals of the Bankruptcy Code: giving every honest debtor a fresh start and treating all similarly-situated creditors the same. *See, e.g.*, 5 Collier on Bankruptcy ¶ 541.01 (15th ed. rev. 2006); Elizabeth Warren, *A Principled Approach to Consumer Bankruptcy Law*, 71 Am. Bankr. L.J. 483, 483 (1997). As to the first goal, the reasoning of the court of appeals below certainly facilitates the "fresh start" objective by preserving for the debtor's own use the assistance payment given to him by legislation enacted for his benefit after the conversion of his bankruptcy case. As to the second goal, this case does not present any type of intercreditor dispute. There is no suggestion that any one creditor should receive value from the debtor's estate to the detriment of another creditor. All of Bracewell's similarly-situated creditors are being treated equally, whether or not they will receive the value of Bracewell's assistance payment. The creditors might certainly receive a greater or lesser distribution from Bracewell's estate depending on whether or not the estate gets the post-petition payment, but the fundamental objective of equal treatment is not implicated.

Rather than implicating the two primary goals of the Bankruptcy Code, this case is limited to the far narrower question whether the value arising out of specific post-petition legislation should inure to the benefit of the debtor or his creditors. Petitioner's argument regarding the four "fundamental objectives" of the Bankruptcy Code substantially overstates the importance of this narrow dispute to the operation of bankruptcy law.

First, Petitioner argues that this case affects the protection of "security interests of creditors by denying them

access to funds based on the arbitrary date of filing by the debtor." Pet. 26. But Petitioner has identified no lien or security interest involved in this case at all, and has given no reason why a lienholder, as distinct from any other creditor, has been or would be adversely affected by the Eleventh Circuit's decision.

Second, Petitioner argues that this case might encourage a debtor to "race to the courthouse" and file a bankruptcy case in anticipation of legislation to be passed under which the debtor might receive some benefit that would, if the debtor waited, become property of the estate. Pet. 26. But Congress passed the Bankruptcy Code in part to prevent competing creditors from racing to the courthouse to gain priority over one another—not to prevent debtors from racing to the courthouse. *See, e.g.*, *Union Bank* v. *Wolas*, 502 U.S. 151, 161 (1991) (noting avoidance powers of trustee designed to discourage race to courthouse by creditors). And in any event, given the many vagaries of the legislative process, it is far too much to assume that debtors of any significant number would be as attuned to the benefits of prospective federal legislation as Petitioner suggests. In any event, Congress could certainly make clear in any new legislation whether the benefit should inure to a debtor or the debtor's creditors.

Third, Petitioner argues that the Eleventh Circuit's decision will allow farmer-debtors an undeserved windfall. Pet. 28. This "policy" concern simply assumes the conclusion that the Eleventh Circuit's decision was in error. If the Eleventh Circuit's decision is correct, then Bracewell received exactly what Congress intended to provide him. Describing the payment as a "windfall" adds nothing to the analysis.

Fourth, Petitioner argues that the Eleventh Circuit's decision encourages debtor abuse. Pet. 29. But this is simply a repackaged version of the farmer-debtor "race to the courthouse" argument, and fails for the same reason. In any event, bankruptcy jurisprudence is replete with examples of permissible "bankruptcy planning" in which a debtor makes

decisions regarding its assets and liabilities before it files a bankruptcy in order to maximize the protections available to debtors under the Bankruptcy Code. *See, e.g., Gill* v. *Stern (In re Stern)*, 345 F.3d 1036, 1043-1044 (9th Cir. 2003), *cert. denied*, 541 U.S. 936 (2004) (finding debtor's transfer of assets from IRA to pension plan on eve of bankruptcy was not fraudulent); *Marine Midland Bus. Loans, Inc.* v. *Carey (In re Carey)*, 938 F.2d 1073, 1076-1078 (10th Cir. 1991) (affirming chapter 7 debtor's discharge notwithstanding prebankruptcy planning converting nonexempt to exempt assets). So long as the bankruptcy filing otherwise serves a proper bankruptcy purpose, such "bankruptcy planning" is nothing more than taking advantage of a right given to debtors by Congress. *See* H.R. Rep. No. 95-595, 361 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6317; S. Rep. No. 95-989, 76 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5862 ("As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.").

Finally, Petitioner argues that the effects of the Eleventh Circuit's decision regarding a farmer-debtor and his benefits under a specific federal crop disaster statute "could be far-reaching." Pet. 29-30. Specifically, Petitioner contends that the decision below may impair a secured creditor's rights to adequate protection (presumably under 11 U.S.C. § 363(e), for example). But the Petitioner does not explain why this would be so, and it is difficult to imagine why this case—which does not involve secured creditors, liens, 11 U.S.C. § 363(e), or any similar issue—should affect the adequate protection afforded to secured creditors. And while Petitioner argues that lenders will be less likely to lend to farmers if the lenders do not have access to payments that the farmer might receive if (a) the farmer files bankruptcy, (b) Congress thereafter passes a law authorizing payments to farmers, (c) the farmer happens to apply for, qualify for, and receive such payments, and (d) those

payments were determined by reference to pre-bankruptcy losses, the remoteness and high degree of contingency of this circumstance makes it highly unlikely that the ruling will have any material effect on a lender's decision whether to extend credit.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted.

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